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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 687

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

FRANK T. CULLITAN,
Prosecuting Attorney of Cuyahoga County, Ohio,

GERTRUDE M. BAUER,
Assistant Prosecuting Attorney,
Criminal Courts Building,
Cleveland 14, Ohio,
Attorneys for Respondent.

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OBJECTIONS TO JURISDICTION.

There is no substantial federal question involved which would require this Court to review this case.

The Ohio Supreme Court decided this case in accordance with statutes of this State and in accordance with the applicable decisions of this Court.

"Freedom of the Press" has been invoked by the Petitioners under the First and Fourteenth Amendments to the Federal Constitution in an attempt to reduce the authority of a judge over the conduct of his courtroom while in session. If such a right should yield to this claim of "freedom of the press," the authority and dignity of all of the courts would be seriously affected.

The challenge in this case was the court's right to forbid the taking of photographs in the courtroom while the court was in session and to exercise its inherent power to punish for contempt committed in the face of the court in defiance of such order of the court.

No one of the decisions of this Court relied upon by the petitioners in their application for this writ supports their claims in this case. On the other hand, this Court decided in *Fisher v. Pace*, 336 U. S. 155, 93 L. Ed. 435 (1949) that such contempt power of the court is not open to question. Mr. Justice Reed delivered the opinion in that case and stated:

(336 U. S. at pp. 159-161):

"Historically and rationally the inherent power of courts to punish contempts in the face of the court without further proof of facts and without aid of jury is not open to question. This attribute of courts is essential to preserve their authority and to prevent the administration of justice from falling into disrepute."

In *Bridges v. California*, 314 U. S. 252, 266, 86 L. Ed. 192, 205, 62 S. Ct. 10, 159 A. L. R. 1346, this Court held that the power of the state and federal courts to protect themselves from disturbances and disorders in the courtroom by the use of proceedings in contempt cannot be challenged as conflicting with constitutionally secured guaranties of liberty.

The petitioners state:

"In our opinion, Sections 2323.01, 2323.22 and 2705.01 of the Ohio Revised Code are not here involved. However, since the opinion of the Ohio Supreme Court contains a general reference to those statutes (App. A, p. 42, 162 Ohio St. 370, 375), they are printed in Appendix B, infra, p. 43." (Pet., p. 5.)

Both the Court of Appeals of Cuyahoga County and the Ohio Supreme Court had these statutes before them for consideration in deciding this case. The Petitioners were urging in the Court of Appeals and the Ohio Supreme Court that the order of the Common Pleas Court was not a

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valid one because it was not in writing nor journalized as required by Revised Code Sections 2323.01 and 2323.22. The Court of Appeals and the Ohio Supreme Court said in their opinions in answer to this claim:

> "Such rule has application to the judgments or orders of the court when dealing with the trial of cases filed and invoking the court's jurisdiction. A judge is at all times during the sessions of the court, empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business." (Pet. App. A, pp. 33, 39.)

The Respondent urged in the Court of Appeals and the Ohio Supreme Court the application of Ohio Revised Code Section 2705.01 (Pet., App. B, p. 43), which provides:

Ohio Revised Code, Section 2705.01:

> "A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice."

This case comes within the purview of that statute and the Ohio Supreme Court so held (Pet., App. A, p. 42).

The act of the petitioners was a direct contempt committed in the presence of the Court. The Common Pleas Court could have acted summarily in accordance with this Statute. Written charges were filed and a formal hearing was had but the fact that the Court did not act summarily does not change the nature of the contempt, nor the issue involved. *Myers v. State,* 46 O. S. 473; *Lowe v. State,* 9 O. S. 337; 9 *O. Jur.,* pp. 15-17, Sec. 4.

The decision of the Ohio Supreme Court was based on State law. There is, therefore, no substantial federal question involved.

QUESTION PRESENTED.

Certain claims hereinafter commented upon, are being made by the petitioners as representing the "question presented" in this case. However, we believe the question to be and the only issue:

> **Whether a court has inherent power to regulate procedure and decorum in its courtroom while in session and to exercise its power to punish for contempt committed in the presence of the court, those who thereby interfere with this judicial function.**

The petitioners contend that the question presented in this case is a violation of their constitutional right of "freedom of the press" as guaranteed by the First and Fourteenth Amendments to the Federal Constitution. "Freedom of the press" must not be confused with an abuse of such liberty by invading the domain of the courts, which the petitioners unquestionably did in this case.

They state that the conviction for contempt was based upon, not only the taking, but the subsequent publication, of the photograph. The record shows that the finding that the petitioners were guilty of contempt was based upon the violation of the court's order in taking the photograph in the courtroom while the court was in session, and not for the publication of the photograph (Pr. R. 5) (Pet., App. A, pp. 23-24). We are not dealing in this case with any out-of-court contempts by "publication."

1. The allegation that for many years the reporting of criminal proceedings in the same local trial court had included the publication of photographs taken in the court room has no bearing on the question presented (Pet. p. 3). The court made an express order in the case at bar, which the petitioners violated with full knowledge of the order.

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2. Nor does the allegation that the fifteen judges of the Common Pleas Court had considered, but declined to adopt, a rule prohibiting the taking of pictures during criminal trials, have any bearing (Pet. p. 3). Such an order lies within the discretion of the individual judge in presiding over his courtroom.

3. Nor does the allegation that Judge Silbert did not issue the order in writing or announce it from the bench, have any bearing (Pet., p. 3). The record shows that these petitioners had notice of the order and acted with full knowledge of such order in taking the picture in question.

4. Nor does the allegation that Judge Silbert advised the petitioners that in making the order in question he was complying with the Canons of Judicial Ethics (Pet., pp. 3-4). The court merely mentioned the Canon to the newspaper reporters in chambers the day before the arraignment of Brewer to show that he was not being arbitrary or abusing his discretion in giving the order he gave.

5. It is alleged that the effect and purpose of taking and publishing the photograph was to maintain and increase public confidence in, and public respect for, the court (Pet. p. 4). Where would we have any public confidence in, or public respect for, the courts if the courts were without power to preside over their courtrooms without disturbance and interference as happened in this case?

6. The petitioners state that the picture was taken carefully and unobtrusively and, therefore, did not in fact obstruct or interfere with the administration of justice (Pet., p. 4). Violation of an order of the court is a criminal contempt since it is an act obstructive to the administration of justice. The taking of this photograph was intended to obstruct the court in carrying out its order, and thus an

interference with a judicial function and an act obstructive to the administration of justice.

7. The petitioners claim that a very brief pause occurred when the photograph was taken, which resulted from the desire of the presiding judge to inquire as to the identity of the person who had taken the picture (Pet., p. 4). Whether there was a very brief pause or a long pause, or even if there had been no pause in the proceedings as a result of the picture taking, this was a contempt committed in the face of the court in defiance of the court's order. Further, the taking of the photograph did create a disturbance and caused an interruption in the arraignment proceedings.

STATEMENT OF THE CASE.

Judge Joseph H. Silbert was sitting as Presiding Judge of the Cuyahoga County Common Pleas Court, Criminal Branch, during the May, 1953 term of said Court. On August 19, 1953 the Grand Jury of Cuyahoga County returned an indictment against former Probate Judge Nelson J. Brewer.

At about 4 o'clock in the afternoon on August 19th, Petitioner Sam Giaimo, representing the Cleveland Press, and Sanford Watzman, a reporter for the Cleveland Plain Dealer, were in Judge Silbert's chambers. They had been there because they had been informed that an indictment was about to be brought up by the Grand Jury Foreman against Mr. Brewer and they wanted to know when the arraignment would be had.

Judge Silbert informed the two reporters that arrangements had been made for the arraignment the following morning and that in view of Canon 35 of the Canons of Ethics of the American Bar Association, adopted by the Cleveland Bar Association on October 13, 1952, no pictures

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would be permitted to be taken in the courtroom during such arraignment, or while the court was in session (Pr. R. 9).

Sam Giaimo, on the evening of August 19th, informed Petitioner Louis Clifford, City Editor of the Cleveland Press, about Judge Silbert's order that no photographs were to be taken in the courtroom during the arraignment of Mr. Brewer (Pr. R. 25).

The following morning, on August 20th, Louis Clifford instructed Petitioner Thomas to go to the Criminal Courts Building with Giaimo, and to take photographs of Mr. Brewer, and particularly to take a photograph of Mr. Brewer standing before the bench in the courtroom while being arraigned upon the indictment (Pr. R. 33-34). Clifford also instructed Giaimo to take Thomas with him to the Brewer arrignment and to cover the story (Pr. R. 26-27).

During the arraignment of Mr. Brewer, while Mr. Brewer and his counsel were standing before the bench of the Court, the Court was suddenly disturbed and the proceedings were suddenly interrupted by Petitioner James Thomas, a photographer for the Cleveland Press, who took a flashlight photograph showing Mr. Brewer and his counsel facing the bench (Respondent's Exhibit 1; Pr. R. 107).

Judge Silbert immediately stopped the proceedings, inquired as to who took the photograph, was informed by Giaimo and reminded him of his order that no photographs were to be taken in his courtroom while the Court was in session. Giaimo responded that this particular photograph had been ordered taken by his "boss" (Pr. R. 24).

After the arraignment, Judge Silbert telephoned Louis B. Seltzer, Editor of the Cleveland Press, informed him

about the photograph having been taken and suggested that the picture not be published in the newspaper (Pr. R. 60). Mr. Seltzer, after consulting with Petitioner Clifford, called Judge Silbert back and told him that the photograph would be published. It appeared upon the front page of editions of the Cleveland Press the same day.

On August 27, 1953, the Prosecutor, as a friend of the Court and appointed by said Court to prepare and prefer a charge of contempt against the Petitioners, charged contempt in said Court as follows:

> "That on August 20, 1953, while the Court of Common Pleas of Cuyahoga County, Ohio, Criminal Branch, was in session with the Honorable Joseph H. Silbert presiding, and while Nelson J. Brewer was being arraigned on an indictment then and there pending against him in said Court, being Common Pleas case No. 63332, James Thomas, a photographer employed by the Cleveland Press, and at the direction of Louis Clifford and Sam Giaimo, the City Editor and Reporter of the Cleveland Press, respectively, entered the courtroom of said Court and took a photograph showing Nelson J. Brewer being arraigned, which photograph was later published in the Cleveland Press, a daily newspaper of general circulation in the State of Ohio and particularly in Cuyahoga County, Ohio, all of which was contrary to and in disobedience of the express order made by the Honorable Joseph H. Silbert that no photographs were to be taken in said courtroom and the said Respondents then and thereby transgressed the dignity and honor of the Court and obstructed the orderly administration of justice." (Pr. R. 1-2)

A hearing was had on this charge before the Honorable Joseph H. Silbert on September 9, 1953 and the petitioners were adjudged guilty of contempt for disobeying the order of the court. The finding that the petitioners

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were guilty of contempt was based upon the violation of the court's order in taking the photograph in the courtroom while the court was in session, and not upon its publication (Pr. R. 5) (Pet. Br., App. pp. 23-24).

Giaimo testified on the contempt hearing that the Court had said in chambers that "nobody is going to jail and nobody is going to be cited for contempt, not like somebody else did" (Pr. R. 29). The record shows that the Court was instructing Giaimo and Watzman beforehand that no photographs were to be taken at the arraignment of Mr. Brewer so that nobody would go to jail or be cited for contempt for violation of the order as was done in a case of a reporter who took a photograph in the courtroom of Judge Frank J. Merrick in the preceding term (Pr. R. 29).

That the petitioners knew they were violating an express order of the court in taking the photograph in question is unequivocally shown in the record. Giaimo testified on direct examination:

> "As I left the Judge said, 'No pictures permitted in the courtroom or in the chambers. Is that clear to you, Mr. Giaimo?'
>
> "I said, 'I understand your order. It is very clear. Thank you!' " (Pr. R. 20.)

On cross-examination Giaimo testified:

> "Mr. Giaimo, on the evening of the 19th when you left Judge Silbert's chambers you knew that he had issued an order that no photographs were to be taken in the courtroom or in chambers?
>
> A. He told me he wouldn't permit photographs in the courtroom or in the chambers because of the Canon recently adopted by the Cleveland Bar Association which he would have to abide by because he was a lawyer and would be subject to disciplinary action

by the Bar if he permitted pictures. I knew that, yes. He explained that to me.

Q. And you communicated that information to Mr. Clifford?

A. Yes, without any detail.

Q. You told him, did you not, that the Judge had given an instruction that there was to be no pictures taken in the courtroom or in the chambers?

A. Yes. I told Mr. Clifford that the Judge said there would be no pictures permitted in the courtroom or in the chambers because of the Canon of Judicial Ethics.

Q. What did Mr. Clifford say to that?

A. He said, 'We will want to take pictures.'" (Pr. R. 25.)

Petitioner Clifford testified on direct examination:

"Q. Did you have a conversation with Mr. Thomas?

A. Yes.

Q. When did that take place?

A. Very shortly after I talked to Sam.

Q. What was that conversation?

A. It was in some detail. I told Jim to come here and take a photograph of Judge Brewer being arraigned before Judge Silbert.

Q. You did that aware of the wish expressed to Mr. Giaimo by Judge Silbert that no photographs be taken?

A. I was aware that Judge Silbert had told the lawyer that there would be no pictures taken in the court or in the office, and I was aware that Judge Silbert had told Sam Giaimo that there was to be no picture taken, and I was aware that Giaimo had told Judge Silbert that he understood that order but made no promise of what he or the Press would do." (Pr. R. 46.)

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Further, no claim was made on the hearing on the contempt that the petitioners were under any mistaken belief that the Court did not expect its order to be obeyed. In contempt proceedings for a direct contempt, the court can take judicial notice of what was said, having been present, needs no evidence and may proceed upon its own knowledge of the facts. *State v. Myers, supra*; 9 *O. Jur.*, pp. 168-169, Sec. 85; *Ex parte Terry,* 128 U. S. 289, 32 L. Ed. 405, 9 S. Ct. 77.

The claim is made that the Petitioner Thomas had no knowledge of the Judge's conversation with Giaimo respecting courtroom photographs (Pet., p. 6). The Record establishes that the circumstances under which Thomas took this photograph were such that there cannot be much question but that he had full knowledge of the order that had been issued by Judge Silbert.

Clifford went into a great deal of detail in instructing Thomas to particularly get the photograph on the arraignment (Pr. R. 46-47). Thomas had been warned by Giaimo that there might be trouble (Pr. R. 29, 34). A significant fact also shown in the record is that after taking the photograph, Thomas did not retain the plate in his possession but passed it to Giaimo shortly after taking the picture (Pr. R. 27-28). The plate was then passed to Jim Vail, a Cleveland Press reporter, who delivered it to the Cleveland Press office (Pr. R. 47-48). The record further shows that Thomas disturbed the Court by interrupting the proceedings at the time he took the photograph in the courtroom.

ARGUMENT.

Reasons for Not Granting the Writ.

1. It is contended that the Common Pleas Court's order that no pictures were to be taken in the courtroom while the court was in session restrained the petitioners from obtaining or publishing news of a criminal trial (Pet. pp. 9-10).

The court did not presume to interfere with the rights of the petitioners to fully report and publish the proceedings on the arraignment, and the petitioners did extremely well in detailing every fact of the arraignment. Further, the record shows that the petitioners obtained pictures of Mr. Brewer immediately preceding and following this session of the court (Petitioners' Exhibits B, C, D, E, F, Pr. R. 109-113), and were not restrained by the court in the taking or publishing of any such pictures.

The point is that the petitioners were not content with the opportunities they had to secure this man's picture before and after the court session, and deliberately challenged the authority of the Court over the conduct of its courtroom. If the incident that happened in this case were multiplied, as the Court of Appeals and Ohio Supreme Court stated: "If one photographer can take pictures, others should have equal rights" (Pet., App. A, pp. 36, 41) our courtrooms could be turned into public spectacles, with newspaper photographers and television cameramen riding roughshod over the Courts during the conduct of their sessions and the Constitutional guaranty of a fair trial in a criminal case could be abridged.

The cases the petitioners cite under this first claim are not in point. *Grosjean v. American Publishing Co.* (Pet., pp. 9-10) was an action to enjoin the enforcement of a state statute; *Near v. Minnesota* (Pet., p. 10) involved

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the constitutionality of a Minnesota statute providing for the abatement as a public nuisance of malicious and defamatory newspapers. *Craig, et al. v. Harney* (Pet., p. 10), was a contempt action for the publication, while a motion for new trial was pending, of newspaper articles which unfairly reported the facts of a civil case and an editorial criticizing the judge's conduct of the trial.

2. The petitioners claim that the communication of ideas by picture, equally with the printed word, is included within the rights of free speech and a free press.

The petitioners were not restrained by the court from taking pictures of this man and the record shows that they had any number of pictures of him to show the public what he looked like, if the public were interested in his features.

The public's right to know about what occurs in a courtroom during a trial, except for morbid curiosity, is not concerned with the physical characteristics and attributes of the litigants, attorneys, the judge, or even the courtroom itself, which visible objective facts are the only information that a newspaper photograph can convey to the people.

What the people have a right to know is that the principles of law and justice are being universally practiced in the courtroom during sessions of the court. That knowledge cannot be portrayed literally in a newspaper photograph.

Again, the cases which the petitioners cite under this second claim are not pertinent. *Burstyn, Inc. v. Wilson* and *Superior Films, Inc. v. Ohio* (Pet., p. 10), were concerned with licensing statutes in New York and Ohio for the exhibition of motion pictures.

3. The petitioners cite *Bridges v. California, Pennekamp v. Florida* and *Craig v. Harney,* claiming that in those cases this Court limited the contempt powers of a court to a showing that "the exercise of such power is necessary to meet a clear, present and highly imminent danger to the administration of justice" (Pet., p. 11).

The Court of Appeals of Cuyahoga County and the Supreme Court of Ohio stated in their opinions in the instant case:

> "In the case of Bridges v. California, 314 U. S. 252 (266), 86 L. Ed. 192 (205), 62 S. Ct. 10, 159 A. L. R. 1346, the Supreme Court of the United States held that both state and federal courts have the power to protect themselves from disturbances and disorders in the courtroom by the use of proceedings in contempt and that power cannot be challenged as conflicting with constitutionally secured guaranties of liberty." (Pet., App. A, pp. 35, 40.)

Neither the *Bridges, Pennekamp* or *Craig* cases, therefore, support the petitioners' position in the instant case, as contended. Moreover, applying the "clear and present danger" test to the case at bar, we know of no greater danger to the administration of justice than this attempt of the petitioners to reduce the authority of a court over the conduct of its courtroom while in session.

4. It is argued further by the petitioners that "nothing in the decisions of this Court or in constitutional principle suggests that the power of a state court to abridge or limit freedom of speech and of the press is any greater because the allegedly contemptuous act occurred in the presence of the court" (Pet., p. 11).

In answer to that, the petitioners are overlooking what Mr. Justice Black said in delivering the opinion of this Court in the *Bridges* case:

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(314 U. S. 252, 266):

> "To be sure, it occurred no more to the people who lived in the decades following Ratification than it would to us now that the power of courts to protect themselves from disturbances and disorder in the court room by use of contempt proceedings could seriously be challenged as conflicting with constitutionally secured guarantees of liberty."

And the petitioners in so claiming, are overlooking the decision of this Court in *Fisher v. Pace, supra,* in which the Court held that the inherent power of a court to punish contempt in the presence of the court is "not open to question." And no "clear and present" danger test was applied by this Court in that case.

5. The petitioners state that reporting and publishing news to keep the people informed with respect to the administration of justice in their courts is not as accurate as the taking and publishing of pictures (Pet., p. 12).

If the written description of the reporters present at the arraignment did not accurately inform the public that Mr. Brewer "was treated precisely the same as the most humble citizen" (Pet., p. 12), we don't see how a photograph could tell the public what was said or done in that courtroom on the arraignment, nor how a photograph could correct their inaccurate reporting.

There was no attempt on the part of the court to censor any report of these proceedings or to prohibit a publication of any matters of fact in connection with such proceedings.

6. The petitioners argue that there was no showing of an interference with the administration of justice in the taking of this photograph; that it occasioned only a brief pause made necessary by the court's "unjustified

pique" and that it did not create any "clear or present danger" to the administration of justice. Under this claim the petitioners admit that pictures might be taken to such an extent and under such circumstances as "to interfere with the administration of justice" (Pet., pp. 12-13).

If the taking of this photograph in the courtroom during the arraignment of Mr. Brewer in defiance of the court's express order—if that is not contempt and an obstruction of the administration of justice—then we have a principle established where the incident could be multiplied by numerous newspaper photographers entering a courtroom while the court is in session, either at arraignment or during the progress of a trial, and indiscriminately taking photographs. Such acts obviously would be disconcerting and interruptive of the orderly administration of justice. Whether there was a brief pause or a long pause in the arraignment proceeding occasioned by the taking of the picture is no reason why the petitioners should be at liberty to ignore a positive judicial order. A trial judge must have complete authority in his courtroom to insure that nothing distracting or disconcerting is done by the non-litigants who may be present. The judge's interpretation and discretion as to what may distract or disconcert his court must be final. The judge's authority in that regard cannot be summarily infringed by anyone, including newsaper men.

A case on all fours with the principle involved in the instant case is that of *Ex Parte Sturm, et al.* (152 Md. 114, 136 Atl. 312) (Maryland Court of Appeals—1927), 51 A. L. R. 356, a case which has not been reversed, modified or overruled on the question of the power of the court to forbid the use of cameras in its courtroom while the court is in session.

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In upholding the trial judge, the Maryland Court of Appeals stated, in 51 *A. L. R.*, at page 361:

> "The challenge in this case of the court's right to forbid the use of cameras in the courtroom during the progress of the trial presents an issue of vital importance. If such a right should yield to an asserted privilege of the press, the authority and dignity of the courts would be seriously impaired. It is essential to the integrity and independence of judicial tribunals that they shall have the power to enforce their own judgment as to what conduct is incompatible with the proper and orderly course of their procedure. If their discretion should be subordinated to that of a newspaper manager in regard to the use of photographic instruments in the courtroom, it would be difficult to limit the further reduction to which the authority of the courts would be exposed. It would be utterly inconsistent with the position and prerogatives of the judiciary, as a co-ordinate branch of government, to require its submission to the judgment of a non-governmental agency as to a question of proper conduct in the judicial forums."

At page 362:

> "But the duty and disposition of a court to accord a justly ample scope to the liberty of the press should not be carried to the point of an undue abridgment of the court's own freedom. There are proper spheres within which the courts and the press may operate without any conflict of interest or purpose. In this case the liberty of the press has been invoked in support of acts which were an invasion of the domain within which the authority of the courts is exclusive. A due regard for the integrity of the judicial power forbids, and the legitimate interests of the press do not require, that such an encroachment should be sanctioned."

7. The petitioners claim that if the taking of a picture interfered with the administration of justice, it is incredible that the judges of the Common Pleas Court and Judge Silbert in particular would not have adopted such a rule long ago. We see no merit to the argument that other judges and Judge Silbert may have tolerated the taking of pictures in their courtrooms for many years. The petitioners violated an express order of the Court in this case.

8. It is argued that the contempt charged in the written citation included the taking and publishing of the picture, and that Judge Silbert ruled that the taking and publishing of the picture constituted "one continued act of contempt," Pet., p. 14; that in so doing he censored the publication of "news."

The petitioners were not charged in the written citation with contempt for having violated any order of the court forbidding the publication of "news" or photographs, nor did the court so find. They were charged with "disobedience of the express order made by the Honorable Joseph H. Silbert that no photographs were to be taken in said courtroom." While the Court did request the Editor of the Cleveland Press not to publish the photograph and the President of the Cleveland Bar Association made a similar request, the finding that the petitioners were guilty of contempt was based upon the violation of the court's order in taking the photograph while the court was in session, and not for having published the picture. (Pr. R. 5.) There was no finding made by the court that the petitioners were guilty of contempt for having published the picture. The court made no order in this case prohibiting the publication of any photographs.

9. *Bridges v. California* is again cited by the petitioners in connection with their ninth claim that the Ohio

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Supreme Court held that a mere potential possibility of causing a distraction is sufficient, but this Court's holding in the *Bridges* case supports the position of the Respondent herein, that the courts have inherent power to protect themselves from disturbances and disorder in the courtroom by the use of contempt proceedings. Nor is the Ohio Supreme Court decision in this case in conflict with the holding in the *Bridges* case.

10. The petitioners state that the Respondent cited *United States v. United Mine Workers,* 330 U. S. 258, and *Gompers v. Buck's Stove & R. Co.,* 221 U. S. 418 in the courts below and contended that violation of a void order was nevertheless contempt. That is, of course, not the fact. In the Courts below the petitioners were claiming that the order of the court in the instant case was invalid and that an invalid order is properly tested by its disobedience. It was contended in the courts below that Petitioner Clifford specifically directed the taking of the photograph with the thought in mind that there was no valid order which could be violated. In other words, the Petitioner Clifford made himself a judge of the validity of the order and set the order aside.

We cited the foregoing cases in answer to that claim and argued that John L. Lewis did the same thing. He said that an order of the Court was invalid and illegal and defied the order. The United States Supreme Court said that it wasn't for Lewis to say whether the order was legal or illegal; he had his right of appeal. Lewis ignored a temporary restraining order of a District Court and allowed a nation-wide strike to become an accomplished fact. The United States Supreme Court used unequivocal language in condemning such conduct, in the case of *United States v. United Mine Workers of America,* 330 U. S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947).

Mr. Chief Justice Vinson delivered the opinion of the Court in this contempt action against Lewis and stated, at pages 292, 293:

> "In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt."

And again, at pages 293-295:

> "It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."

In *Gompers v. Buck's Stove & Range Company*, 221 U. S. 418, 450, 55 L. Ed. 79⁷, 809, 31 S. Ct. 492 (1911), Mr. Justice Lamar stated:

> "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery."

The petitioners cite *State v. Morrow* (Pet., p. 15), The case is not pertinent. In the *Morrow* case an editor was charged with contempt for publishing matters of public record such as the names of Grand Jurors.

An examination of the opinion of the Ohio Supreme Court will show that there was no such language used or holding in their decision in the instant case that "the federal constitutional rights claimed by Petitioners were

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not, as a matter of federal constitutional law, broad enough to constitute a good defense." (Pet., p. 15).

Nor was there anything "dubious" about the holding of the Ohio Supreme Court in this case, that an "express" order of the lower court was violated by the petitioners. The petitioners contended in the Court of Appeals and in the Ohio Supreme Court that the order of the court having been made in chambers and not having been reduced to writing, was not an "express" order, and they sought to confine disobedience of a court's lawful orders to those which have been reduced to writing and journalized, thereby leaving unpunishable in contempt proceedings, the verbal commands, directions and orders of a court.

From the time a case is pending before the Court, many orders and commands are given by the Court which are not reduced to writing but they are nonetheless, express orders and the person to whom they are made is bound to obey them. The right inheres in the Court to compel due decorum and respect in its presence and due obedience to its orders, and to punish for contempt those who interfere with the Court's conduct of its business, whether the Court has made a written or a verbal order.

In *Belden v. Scott,* 150 O. S. 393 (1948), there was no written order in effect at the time of the contempt and the Court said:

> "Stott was actually in court and was not only apprised of the order of the court but consented thereto. It was after such order was made and with full knowledge thereof that he violated it * * *.
>
> "He comes within the rule, well established and of long standing, that one who has actual notice of an order of injunction and disobeys it is guilty of a contempt although the injunction has not been served upon him or issued, or the order formally drawn up.

Dangel on Contempt, 121; 43 Corpus Juris Secundum, 1010, Section 261. The mandate of the court being effectual upon all parties having notice thereof from the time it was given, it is necessary to fix defendant's liability for a violation, to show only that he was actually apprised of the existence of the order at the time of committing the acts constituting the violation; 12 American Jurisprudence, 405, Section 24, and cases cited."

In *Robertson v. Commonwealth,* 181 Va. 520, 25 S. E. (2d) 352, 146 A. L. R. 966 (1943), it was held:

"The term 'order,' as used in a statute providing for punishment by a court for resistance to any lawful 'order' of the court is not confined to orders reduced to writing, but includes the verbal commands, directions, or orders of the court made during the course of a trial."

In that case, Eggleston, *J.*, stated (146 *A. L. R.* at page 971):

"To hold, as contended by the plaintiff in error, that it was the purpose of the statute to confine summary punishment for disobedience of a court's 'lawful orders' to those which have been reduced to writing, and thereby leave unpunishable in summary contempt proceedings the verbal commands, directions and orders of the court, would, we think, deprive the courts of their 'inherent power of self-defense and self-preservation,' and would 'so far diminish their authority * * * as to render them incapable of the efficient exercise of their functions,' and would, therefore, be entirely incompatible with our holding in Yoder v. Commonwealth, supra, that the statute is constitutional."

In *Fisher v. Pace, supra,* there was no journal entry of the order of the court for which the defendant was held

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in contempt. An attorney was committed for contempt for not obeying the verbal orders of the court.

Whether the instruction of the court to the petitioners was announced from the bench or, as in this case, given in chambers, the record shows that they acted with full knowledge and in defiance of the order.

11. The final claim of the petitioners is that the decision of the Ohio Supreme Court, if not in conflict with the decisions of this Court, nevertheless raises a question with respect to the application of the First and Fourteenth Amendments. As heretofore stated, this Court decided in *Fisher v. Pace, supra,* that the inherent power of courts to punish contempts in the face of the court is not open to question; in *Bridges v. California* that such power of the court cannot be seriously challenged as conflicting with constitutionally secured guarantees of liberty, and in *Ex Parte Terry,* 128 U. S. 289, 313, 32 L. Ed. 405, 412, 9 S. Ct. 77 it is stated:

> "We have seen that it is a settled doctrine in the jurisprudence both of England and of this country, never supposed to be in conflict with the liberty of the citizen, that for direct contempts committed in the face of the court, at least one of superior jurisdiction, the offender may, in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that, according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them."

CONCLUSION.

It is essential to the integrity of the Courts that they shall maintain the power to regulate procedure and decorum in the courtroom while the court is in session and that such discretion of the Court over the conduct of its affairs shall not be subordinated to that of an Editor, City Editor, reporter or photographer of a newspaper.

As the Ohio Supreme Court stated in this case:

> "The judge in enforcing orders directing proper and necessary decorum in the courtroom, while the court is in session, must see to it that the rules enforced are reasonable and necessary for that purpose. Under the undisputed evidence in this case, the rule against taking photographs in a courtroom while the court is in session has much support. Such a rule is in force in all of the federal courts of the United States, is clearly stated in the Canons of Judicial Ethics of the American Bar Association, and is recognized as necessary courtroom decorum by many state and local bar associations and by a great many individual judges of state courts." (Pet. App. A, p. 39.)

In view of all of the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK T. CULLITAN,
Prosecuting Attorney of Cuyahoga County, Ohio,
GERTRUDE M. BAUER,
Assistant Prosecuting Attorney,
Criminal Courts Building, Cleveland, Ohio,
Attorneys for Respondent.

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CERTIORARI DENIED